APPEAL NO. 033012
FILED DECEMBER 23, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). A contested case hearing was held on October 29, 2003. The hearing officer determined that the claimant reached maximum medical improvement (MMI) on June 20, 2003, with a 0% impairment rating (IR) as certified by the Texas Workers' Compensation Commission (Commission)-appointed designated doctor. The appellant (claimant) appealed, asserting that the designated doctor's MMI and IR certifications are against the great weight of the other medical evidence. The respondent (carrier) responded, urging affirmance.

DECISION

Reversed and remanded.

The parties stipulated that the claimant sustained a compensable injury on _____. The claimant testified that the injury occurred as she was "jerking" a heavy cart with three large ice coolers on it. The claimant stated that it felt like she had been struck in her back with a fist, and that she immediately sought medical attention. The claimant testified that she underwent a NCV and three MRIs. The claimant testified that they were unable to complete the first MRI, the films from the second MRI were lost when the mobile unit was involved in a motor vehicle accident (MVA), and finally a third MRI was accomplished on June 28, 2003.

The record reflects that on April 25, 2003, the claimant underwent a NCV, which showed "potential evidence of left lumbosacral radiculopathy." On June 20, 2003, the claimant was examined by the designated doctor. As a result of that examination, the designated doctor certified that the claimant reached MMI as of that date with a 0% IR. In his report, the designated doctor acknowledged the NCV, but discounted it because there were no EMGs to confirm the results. The designated doctor concluded that there was no evidence of pathology and the physical examination was completely normal. As such, he rated the claimant under Diagnosis-Related Estimate (DRE) Lumbosacral Category I of Table 72 of the Guides to the Evaluation of Permanent Impairment, fourth edition (1st, 2nd, 3rd, or 4th printing, including corrections and changes as issued by the American Medical Association prior to May 16, 2000) (AMA Guides). On June 28, 2003, the claimant underwent a MRI which showed a 1-2 mm symmetric annular disc bulge at L4-5, and at L5-S1, a

> 2-3 mm right paracentral and right lateral recess discal substance herniation. Substance contacts the thecal sac and minimally indents. Herniation posteriorly displaces right nerve rootlet sleeve 1-2 mm. Mild facets arthrosis.

On July 8, 2003, the claimant's treating doctor wrote a letter to the Commission expressing his disagreement with the designated doctor's MMI and IR certifications. He stated that the claimant was still having complaints of low back pain, which radiates into the leg. He noted that the claimant has some reduced range of motion in her lumbar spine, and the MRI revealed clinical signs of an injury to the lumbar spine. He concluded by stating that the claimant is entitled to a 5% IR based on "DRE category II." On July 14, 2003, the treating doctor wrote a second letter, in which he stated that the claimant was not yet at MMI due to her continued need of treatment for her herniated disc. On July 25, 2003, the Commission sent the designated doctor a letter of clarification requesting that he review the treating doctor's letter and the June 28, 2003, MRI report. On July 31, 2003, the designated doctor responded to the letter of clarification by stating that his opinion remained unchanged. The designated doctor indicated that he had not seen the MRI films because they were lost in a MVA. He stated that he had "some question to the findings." He next stated that he did not believe that the bulge or the herniation are due to the compensable injury. He concluded by stating that the claimant sustained a myofascial strain. On August 8, 2003, the claimant's treating doctor certified that the claimant was at MMI as of that date with a 5% IR.

In the Statement of the Evidence, the hearing officer wrote:

> The knotty question here, in fact, is whether the real issue here is one of extent. Facially, that might seem to be the case, as [the designated doctor's] own response to the Commission's inquiry indicated that the bulges, etc, found in the claimant's lumbar spine are results of an "ordinary disease of life" and not incidents of the compensable injury. The preponderance of the credible evidence here, including the claimant's own testimony, is to the opposite effect, that is, that the claimant did sustain injury beyond just a muscle strain.

The hearing officer went on to determine that the designated doctor considered the pathologies, and determined that they added no additional impairment, whatever the source. The hearing officer concluded that the designated doctor's report was entitled to presumptive weight.

The hearing officer erred in determining that the claimant reached MMI on June 20, 2003, with a 0% IR as certified by the designated doctor. We find that the rationale used by the hearing officer in reaching his conclusion that the designated doctor's certification is entitled to presumptive weight and that the claimant reached MMI on June 20, 2003, with a 0% IR pursuant to that certification, is against the great weight and preponderance of the evidence and is reversed. Under the AMA Guides, if the "pathologies" revealed on the NCV and MRI are found to be a result of, or part of, the compensable injury, the claimant would be entitled to a rating under at least DRE Lumbosacral Category II from Table 72. Because the extent of the claimant's compensable injury has never been determined, we remand this case back to the hearing officer for a determination of the extent of the claimant's compensable injury.

Once that issue has been resolved, and barring any agreement between the parties regarding MMI and IR, the claimant is to be reexamined by a designated doctor for the purposes of MMI and IR, with instructions to rate the entire injury and in accordance with the AMA Guides. The designated doctor shall be supplied with all relevant medical records, including the "films" from any diagnostic testing then in existence.

Pending resolution of the remand, a final decision has not been made in this case. However, since reversal and remand necessitate the issuance of a new decision and order by the hearing officer, a party who wishes to appeal from such new decision must file a request for review not later than 15 days after the date on which such new decision is received from the Commission's Division of Hearings, pursuant to Section 410.202 which was amended June 17, 2001, to exclude Saturdays and Sundays and holidays listed in Section 662.003 of the Texas Government Code in the computation of the 15-day appeal and response periods. *See* Texas Workers' Compensation Commission Appeal No. 92642, decided January 20, 1993.

The true corporate name of the insurance carrier is **AMERICAN CASUALTY COMPANY OF READING, PENNSYLVANIA** and the name and address of its registered agent for service of process is

CT CORPORATION
350 NORTH ST. PAUL STREET
DALLAS, TEXAS 75201.

_____
Thomas A. Knapp
Appeals Judge

CONCUR:

_____
Elaine M. Chaney
Appeals Judge

_____
Chris Cowan
Appeals Judge